

AMENDED IN SENATE AUGUST 16, 2005

AMENDED IN SENATE JUNE 23, 2005

AMENDED IN SENATE JUNE 16, 2005

AMENDED IN ASSEMBLY MAY 26, 2005

AMENDED IN ASSEMBLY MAY 4, 2005

AMENDED IN ASSEMBLY APRIL 14, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 178

**Introduced by Assembly Members Koretz, Chan, Jerome Horton,
and Vargas**

**(Coauthors: Assembly Members Jones, Levine, Pavley, and
Saldana)**

(Coauthors: Senators Alquist, Ortiz, Romero, and Soto)

January 24, 2005

An act to add Part 8 (commencing with Section 14950) to Division 12 of the Health and Safety Code, relating to cigarettes.

LEGISLATIVE COUNSEL'S DIGEST

AB 178, as amended, Koretz. California Cigarette Fire Safety and Firefighter Protection Act.

Existing law requires the State Fire Marshal to adopt regulations that specify standards for the special design of cigarette lighters with respect to safety features that prevent operation of the lighters by children 5 years of age or younger.

This bill would prohibit the sale of cigarettes unless the manufacturer of those cigarettes certifies to *the State Fire Marshal and* the Attorney General that the cigarettes have been tested by the

manufacturer in accordance with standards established by the American Society of Testing and Materials and no more than 25% of the cigarettes it manufactures exhibit full-length burns when tested. The bill would require cigarette manufacturers to mark packages of cigarettes to be sold in California to show compliance with these provisions and would require manufacturers, distributors, wholesalers, and retailers to permit an employee of the State Board of Equalization to inspect these markings. Failure or refusal to allow an inspection would subject a person to a civil penalty not to exceed \$1,000.

The bill would impose specified civil penalties on manufacturers, distributors, wholesalers, retailers, and others who knowingly sell or offer to sell cigarettes in violation of these provisions and on manufacturers that knowingly make false certifications in violation of these provisions. The bill would require these civil penalties to be deposited in the Cigarette Fire Safety and Firefighter Protection Fund, which the bill would create in the State Treasury, and would make moneys in the fund, upon appropriation by the Legislature, available to the State Board of Equalization to offset costs for inspecting, seizing, and disposing of cigarettes.

The bill would become inapplicable if federal fire safety standards that preempt these provisions are enacted and the State Board of Equalization so notifies the Secretary of State.

The bill would become operative on January 1, 2007.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares as
- 2 follows:
- 3 (1) Cigarettes are the leading cause of fire deaths in the United
- 4 States each year, claiming 1,000 lives and causing nearly ~~2,500~~
- 5 ~~injuries and four billion dollars (\$4,000,000,000) in societal costs~~
- 6 ~~for deaths, injuries, and property damage. 2,000 injuries and~~
- 7 ~~nearly four hundred million dollars (\$400,000,000) in direct~~
- 8 ~~property damage.~~
- 9 (2) Technology exists to significantly reduce the number of
- 10 fires caused by cigarettes.
- 11 (3) The State of New York enacted a cigarette fire safety
- 12 regulation effective June 28, 2004, that requires cigarettes sold in

1 that state to meet a fire safety performance standard. Canada is
2 scheduled to implement the New York State fire safety standard
3 in the fall of 2005.

4 (4) New York State's cigarette fire safety standard is based
5 upon decades of research by the National Institute of Standards
6 and Technology, congressional research groups, and private
7 industry.

8 (5) Cigarettes meeting fire safety standards have been found
9 not to increase the costs to consumers.

10 (6) It is the intent of the Legislature to adopt the cigarette fire
11 safety standard that is in effect in New York State to reduce the
12 likelihood that cigarettes will cause fires, which result in deaths,
13 injuries, and property damage. It is further the intent of the
14 Legislature to adopt this cigarette fire safety standard with a
15 minimum of cost to the state.

16 (b) The Legislature hereby determines that it is within the
17 police powers of the state to protect the health and safety of the
18 people of the state by establishing fire safety standards for
19 cigarettes sold in this state.

20 SEC. 2. Part 8 (commencing with Section 14950) is added to
21 Division 12 of the Health and Safety Code, to read:

22
23 PART 8. CIGARETTES
24

25 14950. (a) This part shall be known and may be cited as the
26 California Cigarette Fire Safety and Firefighter Protection Act.

27 (b) As used in this part, the following terms have the following
28 meanings:

29 (1) "Board" means the State Board of Equalization.

30 (2) "Cigarette" means a cigarette as defined in Section 30003
31 of the Revenue and Taxation Code.

32 (3) "Distributor" means a distributor as defined in Section
33 30011 of the Revenue and Taxation Code.

34 (4) "Manufacturer" means any of the following:

35 (A) An entity that manufactures or otherwise produces
36 cigarettes or causes cigarettes to be manufactured or produced
37 anywhere that the manufacturer intends to be sold in the state,
38 including cigarettes intended to be sold in the United States
39 through an importer.

1 (B) The first purchaser anywhere that intends to resell in the
2 United States cigarettes manufactured anywhere that the original
3 manufacturer or maker does not intend to be sold in the United
4 States.

5 (C) An entity that becomes a successor of an entity described
6 in subparagraph (A) or (B).

7 (5) “Offer to sell” means to offer or agree to sell.

8 (6) “Package” means package as defined in Section 30015 of
9 the Revenue and Taxation Code.

10 (7) “Quality control and quality assurance program” means the
11 laboratory procedures implemented to ensure that operator bias,
12 systematic and nonsystematic methodological errors, and
13 equipment-related problems do not affect the results of the
14 testing. This program ensures that the testing repeatability
15 remains within the required repeatability values stated in
16 paragraph (5) of subdivision (a) of Section 14952 for all test
17 trials used to certify cigarettes in accordance with this part.

18 (8) “Repeatability” means the range of values within which
19 the repeat results of cigarette test trials from a single laboratory
20 will fail 95 percent of the time.

21 (9) “Retailer” means a person who engages in the sale of
22 cigarettes, but not for the purpose of resale.

23 (10) “Sale” or “sell” means any transfer, exchange, or barter,
24 in any manner or by any means whatever, or any agreement for
25 these purposes. The giving of cigarettes as samples, prizes, or
26 gifts, and the exchanging of cigarettes for any consideration other
27 than money are considered sales.

28 (11) “Stamp and meter impression” means stamp and meter
29 impression as defined in Section 30018 of the Revenue and
30 Taxation Code.

31 (12) “Wholesaler” means a wholesaler as defined in Section
32 30016 of the Revenue and Taxation Code.

33 14951. (a) A person shall not sell, offer, or possess for sale in
34 this state cigarettes not in compliance with the following
35 requirements:

36 (1) The cigarettes are tested by the manufacturer in accordance
37 with the test method prescribed in subdivision (a) of Section
38 14952.

39 (2) The cigarettes meet the performance standard specified in
40 subdivision (b) of Section 14952.

(3) The cigarettes meet the marking requirement of Section 14954.

(4) A written certification is filed by the manufacturer with *the State Fire Marshal and the Attorney General* in accordance with Section 14953.

(b) This section does not prohibit distributors, wholesalers, or retailers from selling their inventory of cigarettes existing on January 1, 2007, if both of the following conditions are met:

(1) The distributors, wholesalers, or retailers can establish that California tax stamps or meter impressions were affixed to the cigarettes pursuant to Section 30163 of the Revenue and Taxation Code before January 1, 2007.

(2) The distributors, wholesalers, or retailers can establish that the inventory was purchased before January 1, 2007, in comparable quantity to the inventory purchased during the same period of 2006.

(c) This section does not prohibit a person or entity from manufacturing or selling cigarettes that do not meet the requirements of subdivision (a) if the cigarettes are or will be stamped or metered for sale in another state or are packaged for sale outside the United States.

14952. (a) (1) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials (ASTM) Standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes." However, a subsequent ASTM Standard Test Method may be adopted upon finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns that the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the testing requirements in paragraphs (2) to (5), inclusive, and the performance standard specified in subdivision (b).

(2) Testing shall be conducted on 10 layers of filter paper.

(3) Forty replicate tests shall comprise a complete test trial for each cigarette tested.

(4) The performance standard required by subdivision (b) shall only be applied to a complete test trial.

(5) Laboratories conducting testing in accordance with this subdivision shall implement a quality control and quality

1 assurance program that includes a procedure that will determine
2 the repeatability of the testing results. The repeatability value
3 shall be no greater than 0.19 pursuant to subdivision (b).

4 (b) When tested in accordance with subdivision (a), no more
5 than 25 percent of the cigarettes tested in a test trial shall exhibit
6 full-length burns.

7 (c) Each cigarette listed in a certification submitted pursuant to
8 Section 14953 that uses lowered permeability bands in the
9 cigarette paper to achieve compliance with the performance
10 standard set forth in subdivision (b) shall have at least two
11 nominally identical bands on the paper surrounding the tobacco
12 column. At least one complete band shall be located at least 15
13 millimeters from the lighting end of the cigarette. For cigarettes
14 on which the bands are positioned by design, there shall be at
15 least two bands fully located at least 15 millimeters from the
16 lighting end and 10 millimeters from the filter end of the tobacco
17 column or 10 millimeters from the labeled end of the tobacco
18 column for a nonfiltered cigarette.

19 (d) The manufacturer or manufacturers of a cigarette that
20 cannot be tested in accordance with the test method prescribed in
21 subdivision (a) may employ a test method and performance
22 standard for that cigarette that is equivalent to the performance
23 standard prescribed in subdivision (b). The manufacturer or
24 manufacturers may employ that test method and performance
25 standard to certify that cigarette pursuant to Section 14953. All
26 other applicable requirements of this part shall apply to the
27 manufacturer or manufacturers of that cigarette.

28 (e) This section does not require additional testing if cigarettes
29 are tested consistent with this section for any other purpose.

30 (f) In order to ensure compliance with the performance
31 standard specified in subdivision (b), data from testing conducted
32 by manufacturers to comply with this performance standard shall
33 be kept on file by these manufacturers for a period of three years
34 *after the recertification required by subdivision (c) of Section*
35 *14953* and shall be sent to *the State Fire Marshal and the*
36 *Attorney General* upon his or her request.

37 (g) This section shall be implemented in accordance with the
38 implementation and substance of the New York Fire Safety
39 Standards for Cigarettes that are effective on June 28, 2004.

1 14953. (a) Each manufacturer shall submit a written
2 certification to *the State Fire Marshal and* the Attorney General
3 attesting that each cigarette listed in the certification has been
4 tested in accordance with subdivision (a) of Section 14952 and
5 meets the performance standard set forth in subdivision (b) of
6 that section.

7 (b) Each cigarette listed in the certification shall be described
8 with the following information:

9 (1) Brand.

10 (2) Style (for example, light, ultra light).

11 (3) Length in millimeters.

12 (4) Circumference in millimeters.

13 (5) Flavor (for example, menthol, chocolate) if applicable.

14 (6) Filter or nonfilter.

15 (7) Package description (for example, soft pack, box).

16 (8) Marking approved in accordance with Section 14954.

17 (c) Each cigarette certified under this section shall be
18 recertified every three years.

19 (d) Manufacturers certifying cigarettes in accordance with this
20 section shall provide a copy of the certifications to all distributors
21 and wholesalers to which they sell cigarettes and shall also
22 provide sufficient copies of an illustration of the cigarette
23 packaging marking utilized by the manufacturer pursuant to
24 Section 14954 for each retailer to which the distributors and
25 wholesalers sell cigarettes. Distributors and wholesalers shall
26 provide a copy of these cigarette packaging markings received
27 from manufacturers to all retailers to which they sell cigarettes.

28 14954. (a) Cigarettes that are certified by a manufacturer in
29 accordance with Section 14953 shall be marked on the packaging
30 and case to indicate compliance with the requirements of this
31 part. Marking shall be in 8-point type or larger and consist of one
32 of the following:

33 (1) Modification of the universal product code to include a
34 visible mark printed at or around the area of that code. The mark
35 may consist of alphanumeric or symbolic characters permanently
36 stamped, engraved, embossed or printed in conjunction with the
37 universal product code.

38 (2) Any visible combination of alphanumeric or symbolic
39 characters permanently stamped, engraved, or embossed upon the
40 cigarette packaging or cellophane wrap.

(3) Printed, stamped, engraved, or embossed text on the cigarette packaging that indicates that the cigarettes meet California standards.

(b) Before a certified cigarette can be sold in the state, a manufacturer shall submit its proposed marking to the ~~Attorney General~~ *State Fire Marshal*. *The State Fire Marshal may approve the marking upon a finding that it is compliant with the criteria outlined in subdivision (a). Proposed markings shall be deemed approved if the State Fire Marshal fails to act within 10 business days of receiving a proposed marking.* A marking in use and approved for the sale of cigarettes in the State of New York shall be deemed ~~accepted~~ *approved*.

(c) A manufacturer must use only one marking and must apply this marking uniformly for all packagings, including, but not limited to, packages, cartons, and cases, and brands marketed by that manufacturer.

(d) A manufacturer who modifies its marking shall notify *the State Fire Marshal and the Attorney General* of this change and submit *to those officials*, a copy of the new marking which shall comply with subdivision (a).

14955. (a) Any manufacturer or any other person or entity that knowingly sells or offers to sell cigarettes other than through retail sale in violation of this part is subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each sale.

(b) Any retailer, distributor, or wholesaler that knowingly sells or offers to sell cigarettes in violation of this part shall be subject to the following:

(1) A civil penalty not to exceed five hundred dollars (\$500) for each sale or offer for sale in which the total number of cigarettes sold or offered for sale does not exceed 50 packages of cigarettes.

(2) A civil penalty not to exceed one thousand dollars (\$1,000) for each sale or offer for sale in which the total number of cigarettes sold or offered for sale exceeds 50 packages of cigarettes.

(c) The civil penalties imposed pursuant to subdivisions (a) and (b) of this section shall be deposited in the Cigarette Fire Safety and Firefighter Protection Fund.

(d) In addition to any other penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership, or

1 association engaged in the manufacture of cigarettes that
2 knowingly makes a false certification pursuant to Section 14953
3 shall be subject to a civil penalty not to exceed ten thousand
4 dollars (\$10,000) for each false certification.

5 (e) Any person violating any other provision in this part shall
6 be subject to a civil penalty not to exceed one thousand dollars
7 (\$1,000) for each violation. Any cigarettes that have been sold or
8 offered for sale that do not comply with the performance
9 standard required by Section 14952 shall be deemed contraband
10 and subject to seizure and disposal.

11 (f) The Attorney General may bring an action on behalf of the
12 people of the state to restrain further violations of this part and
13 for any other relief that may be appropriate. In any action by the
14 Attorney General to enforce this act, the Attorney General shall
15 be entitled to recover costs of investigation, expert witness fees,
16 costs of the action, and reasonable attorney's fees.

17 (g) It shall be a defense in any action for civil penalties, that a
18 distributor, wholesaler, retailer, or any person in the stream of
19 commerce relied in good faith on the manufacturer's certificate
20 or marking that the cigarettes comply with the requirements of
21 this part.

22 14956. (a) Manufacturers, distributors, wholesalers, and
23 retailers shall permit an employee of the board, upon presentation
24 of the appropriate identification and credentials, to inspect
25 cigarette packagings to ensure they are marked in accordance
26 with Section 14954.

27 (b) Any person that refuses to allow an inspection authorized
28 under this section is subject to the penalty imposed by Section
29 14958.

30 14957. Cigarettes to which are affixed tax stamps or meter
31 impressions in violation of subdivision (a) of Section 14951 shall
32 result in the seizure by the board of those cigarettes in the
33 possession of the person in violation of this part. Any cigarettes
34 seized by the board shall be deemed forfeited.

35 14958. Any person who knowingly fails or refuses to allow
36 an inspection by the board, pursuant to Section 14956, is subject
37 to a civil penalty not to exceed one thousand dollars (\$1,000) for
38 each failure or refusal.

39 14959. This part shall cease to be applicable if federal fire
40 safety standards for cigarettes that preempt this act are enacted

1 and take effect subsequent to the effective date of this act and the
2 board so notifies the Secretary of State.

3 14960. This part shall become operative on January 1, 2007.

4 SEC. 3. (a) The Cigarette Fire Safety and Firefighter
5 Protection Fund is hereby created in the State Treasury. Upon
6 appropriation by the Legislature, moneys deposited into the fund
7 shall be made available to the State Board of Equalization to
8 offset minor administrative costs for inspecting, seizing, and
9 disposing of cigarettes.

10 (b) This section shall become operative on January 1, 2007.